

# Freedom of Information Act (FOIA) Accountability Program



## FOIA Workgroup Status Summary of Key Recommendations (Q4 FY2013)

EPA is making progress implementing recommendations of the Deputy Administrator's cross-agency FOIA Workgroup. The following provides an update on some key recommendations.

Recommendation	Purpose	Status (as of 9/30/13)
Revise EPA's FOIA regulations (#1)	To fully comply with the Open Government Act and DOJ regulations and guidance, 2) reflect changes in EPA's business processes and 3) update FOIA fee information.	Proposed rule planned for publication in December 2013 but will be delayed until March 2014 due to shutdown.
Finalize national standard FOIA operating procedures (SOPs). Make SOPs available to Agency employees and communicate their availability. (#2)	To provide basic instructions for responding to FOIAs submitted to EPA and ensure consistency in the administration of EPA's FOIA Program.	<b>Interim processing procedures</b> issued by CIO on September 30, 2013. (Meets commitment made in 2012 Chief FOIA Officer's Report to Dept. of Justice.)
Require two levels of review of all documents that are released or withheld under a discretionary FOIA exemption. (#3b)	To ensure openness, transparency, consistency of responses and the appropriate application of FOIA exemptions.	<b>Completed.</b> Interim FOIA policy issued on June 24, 2013 mandating the use of FOIAonline. FOIAonline requires two levels of approval of documents. Interim FOIA processing procedures also specify second-level review.
Modify Delegation 1-30. (#4)	To 1) reflect that all fee decisions are now made by the Headquarters FOIA office and 2) require programs and regions to issue formal re-delegation documentation to identify who (by title or position) has the authority to make initial FOIA decisions to release records within their organization.	<b>In process.</b> 1-30 delegation delivered to OARM for agency directive clearance process on Sept. 6.
Establish a repository of records released under FOIA that can be searched by the public before they submit a FOIA request. (#13)	To elevate EPA's level of transparency, reduce administrative costs and reduce the number of new requests by providing public access to previously released records.	<b>Completed.</b> FOIAonline deployed October 1, 2012.
Establish and develop FOIA training requirements that include tailored training for various levels of FOIA professionals. (#16a)	To provide in-depth, role-based training to employees who make decisions on the release of documents.	Scheduled for completion by March 30, 2014.
Establish mandatory annual FOIA training for all employees (#16b)	To educate all employees on their FOIA responsibilities.	Scheduled for completion by September 30, 2014.
Establish and provide reports of overdue and pending FOIA requests to DAAs and DRAs. (#21)	To apprise senior leaders of the status of FOIA requests in their organizations.	<b>Process initiated.</b> Preliminary "scorecard" reports for Q3 provided to HQ FOIA coordinators and Regional FOIA Officers for review & reconciliation. <b>Q4 scorecard reports will be sent to DAAs and DRAs in mid-November.</b>

**From:** Woolford, James

**Sent:** Tuesday, June 10, 2014 11:16 AM

**To:** QIC-SIO

**Cc:** Regional Counsel Contacts; Wynn, Renee; Watkins, Harrell; Woolford, James; QIC-IMO; QIC-Member Backups; IRM BCs; FOIA Officers; Miller, Kevin; Badalamente, Mark; Kaplan, Robert; Leopard, Matthew; Felver, Rachel; Grogard, Megan; Jones-Parra, Lisa

**Subject:** Outlook Search Functionality Issues

**Importance:** High

Dear Colleagues,

This message requests that the Agency place a temporary hold on critical EPA searches using Microsoft Outlook and provides a process for requesting searches for critical matters.

### **BACKGROUND**

On Friday, May 9, 2014, and subsequently on Tuesday, May 20, 2014, Matt Leopard, the Office of Environmental Information (OEI)'s Acting Director for the Office of Information Collection, and Harrell Watkins, OEI's Acting Director for the Office of Technology Operations and Planning, shared important information regarding a newly identified server limitation that restricts search results in Microsoft's Outlook email suite to 250 email messages.

While this issue is still being addressed with Microsoft, OEI, in partnership with other EPA offices and regions, has conducted a series of tests to understand the issue more clearly and identify alternative approaches that would resolve this issue. The research has identified other anomalies related to the Microsoft Outlook search function that require further investigation to fully address and resolve. These have been brought to the attention of Microsoft and we have had ongoing efforts to resolve them.

### **REQUESTED ACTION**

While we recognize the tremendous inconvenience it will cause in the short term, until the issues with the Microsoft Outlook search are resolved, OEI, along with the Office of the General Counsel (OGC), the Office of Enforcement and Compliance (OECA), Regional Counsel, and the Department of Justice (DOJ), recommend Agency functions, especially those used in support of Freedom of Information Act (FOIA) requests, Congressional inquiries, rulemaking, and litigation that currently entail staff searching Outlook using the search tool provided by Microsoft, discontinue use of the search tool until further notice. While Agency employees may continue to search email within Outlook for routine activities (such as locating an old email(s) in your inbox/outbox, etc.), they need to be aware that a search may not return as comprehensive a set of emails they would expect.

In place of using the Microsoft Outlook search function, OEI has established a temporary "work around" by creating an email search service for critical searches that should be used in support of Freedom of Information Act (FOIA) requests, Congressional inquiries, rulemaking, and litigation for which there is an immediate need of assistance. Any staff that must search Microsoft Outlook as part of the preparation of materials related to these critical email searches must request this search by contacting [eDiscovery@epa.gov](mailto:eDiscovery@epa.gov) and providing the following information:

- 1) Title of Search
- 2) Type of Search (for litigation, congressional responses, or FOIA's)
- 3) Search Keywords
- 4) Name/Emails of Custodians
- 5) Search Requester and Contact info (e.g., the FOIA Title and FOIA Coordinator Contact and Phone number if applicable)
- 6) Estimated Number of Documents, Response Date and any other relevant information

OEI is continuing to work through this issue with Microsoft and understands that this is a high priority for the Agency to resolve as expeditiously as possible. We will provide an update on the status of the issue within the next five business days or sooner, as well as any additional guidance on the interim request process.

**FOR FURTHER INFORMATION**

For further information regarding this issue, please contact Harrell Watkins at 202-566-0672.

Thank you for your support in this matter.

Jim Woolford  
Acting Principal Deputy Assistant Administrator  
Office of Environmental Information  
US Environmental Protection Agency  
Room 5000 – William J Clinton Bldg – Connecting Wing

**From:** Woolford, James

**Sent:** Thursday, June 19, 2014 2:17 PM

**To:** QIC-SIO

**Cc:** Regional Counsel Contacts; Wynn, Renee; Watkins, Harrell; Woolford, James; QIC-IMO; QIC-Member Backups; IRM BCs; Calderon, Wanda; Jang, Sharon; Kercheval, Stephanie; Leahy, Tricia; Palmer, Angela; Vanholt, Richard; Warden, Vivian; Miller, Kevin; Badalamente, Mark; Kaplan, Robert; Leopard, Matthew; Felver, Rachel; Grogard, Megan; Jones-Parra, Lisa; Giles-AA, Cynthia; Smith, Roxanne; Minoli, Kevin

**Subject:** UPDATE on Outlook Search Functionality Issues

Dear Colleagues,

### **BACKGROUND**

On Tuesday, June 10, 2014 I notified you that OEI's research on the Microsoft Outlook search function identified anomalies that require further investigation to fully address and resolve. This is a status update on our efforts. OEI is continuing to press for an expeditious resolution on this matter by adding both more staff and more contract funding to find a solution. And we are continuing to work with OGC, OECA and OEA on this matter as well to make sure we meet their critical needs.

In that email, I asked that staff using the Microsoft Outlook search function to support Agency functions, especially those used in support of Freedom of Information Act (FOIA) requests, Congressional inquiries, rulemaking, and litigation, discontinue use of the search tool until further notice. OEI has established a temporary "work around" for this issue by creating an email search service for critical searches. This "work around" service should be used to support Freedom of Information Act (FOIA) requests, Congressional inquiries, rulemaking, and litigation for which there is an immediate need of assistance.

### **STATUS**

While EPA does not yet have resolution to the Microsoft Outlook search issue, OEI continues to work with Lockheed Martin's and Microsoft's technical staff and its leadership to address this urgent issue. OEI staff, in partnership with the EPA regional and program experts, have identified two possible technical options that could potentially support our needs. The possible technical options are:

- 1) a custom desktop search application that would allow individual users to search their email boxes and return and save the results of these search, and/or
- 2) a centralized request and search service that would allow a set of contractors and/or staff to search and retrieve email from across EPA email accounts using another software tool available from Microsoft.

These still need to be fully vetted and tested.

We are also working on a potential desk statement in partnership with OGC, OECA and OEA should it be needed.

### **ACTION REQUESTED**

On Thursday, June 12, OEI's Matt Leopard sent an email to the IRM Branch Chiefs requesting that the name of a point of contact in each region be submitted to Steve Newman ([newman.steve@epa.gov](mailto:newman.steve@epa.gov)) by

**COB on Monday, June 16** to assist with expanded testing and refinement of these solutions. OEI plans to test these solutions with its regional partners over the upcoming weeks. If either one of these two technical options meets our requirements, we hope to begin a phased roll out to the Agency in late June or early July for additional validation. If this initial testing is successful, the next phase will be to broaden the evaluation to include our programs and labs to ensure the solution meets their business needs.

Meanwhile, we ask both Headquarters and Regional staff and managers to use the process I outlined last week to support Freedom of Information Act (FOIA) requests, Congressional inquiries, rulemaking, and litigation for which there is an immediate need of assistance.

#### **REMINDER**

As we work to resolve our issues with the Microsoft search function, we appreciate your assistance by only requesting support from our centralized search service where there is a critical need. I've attached my email from June 10 that provides instructions on the process for requesting MS Outlook searches through our temporary centralized service.

OEI is working closely with other offices and will continue to seek opportunities to communicate and assist these communities in this difficult time. We plan to provide an update on the status of the issue no later than Thursday, close of business and also provide any additional guidance on the interim request process that might be helpful. If there is a change in the interim that we believe needs to be communicated, we will do that as well.

#### **FOR FURTHER INFORMATION**

For further information regarding this issue, please feel free to contact Matt Leopard (OIC) on 202 566-1698 or Harrell Watkins (OTOP) at 202-566-0672 .

Thank you for your support in this matter.

James Woolford  
Acting Principal Deputy Assistant Administrator  
Office of Environmental Information  
US Environmental Protection Agency  
Room 5000 – William J Clinton Bldg – Connecting Wing

LETTER A: Generic Substantiation, FOIA

Approved OMB 2020-0003  
Approval expires XXXX

**Request for Substantiation In Response to a  
Request Under the Freedom Of Information Act**

**By Certified U.S. Mail; Return Receipt Requested**

*(Name, title, and address of the [designated] representative of the affected business)*

Re: Freedom of Information Act (FOIA) Request [INSERT FOIA #]

Dear [Addressee]:

The U.S. Environmental Protection Agency (“EPA” or “Agency”) has received a request under the FOIA for certain records *[if submitted by the business whose information it is: that you submitted to the EPA] [if submitted by an entity other than the business whose information it is: in EPA’s possession]* pertaining to *[a detailed description of the information or specific list of documents that is/are the subject of the advance or final confidentiality determination]*. *[If information has been claimed as CBI: You have claimed (all or part) of this information as confidential business information (“CBI”).] [If no claim has been made: In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [if submitted by the business whose information it is: the information you submitted to the EPA] [if submitted by an entity other than the business whose information it is: this information in EPA’s possession] is confidential business information (“CBI”).]* Under the EPA regulations at 40 C.F.R. Part 2, Subpart B, the FOIA request has been initially denied to afford you an opportunity to provide comments to *[If no claim has been made: claim this information as CBI and]* substantiate your claim(s) as described below.

The purpose of this letter is to notify you that the EPA (*appropriate legal office*) will be making a(n) (*advance or final*) confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group, or class of documents claimed

by you to be CBI contains a significant amount of information which (*appropriate legal office*) determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed to the requester without further notice to you.

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.
5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.
10. If you believe any information to be (a) trade secret (s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret (s).
11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

[*For contract-related CBI:* Enclosed is the EPA Class Determination 1-95 entitled, *Confidentiality of Certain Business Information Submitted by Contractors and Prospective Contractors*, which addresses the treatment of different types of information related to contracts. You may consider reviewing Class Determination 1-95 as you develop your response.]

[*If applicable to another EPA class determination:* Enclosed is the EPA Class Determination [class determination number] entitled, [name of the class determination], which addresses the treatment of [description of class determination]. You may consider reviewing Class Determination [#] as you develop your response.]

Please note that *you bear the burden of substantiating your confidentiality and trade secret claim(s)*. Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your comments must be postmarked or hand delivered to this office, or emailed to [email address], by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved without the consent of the FOIA requester. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call me at [telephone number].

Sincerely,



[Signature and Title ; Office Name and Address]

[Enclosure]

LETTER B: Generic Substantiation, Non-FOIA

Approved OMB 2020-0003

Approval expires xxxx

**Request for Substantiation From an Affected Business**

**By Certified U.S. Mail; Return Receipt Requested**

*[Name, title, and address of the [designated] representative of the affected business]*

Re: \_\_\_\_\_

Dear *[Addressee]*:

The U.S. Environmental Protection Agency (“EPA” or “Agency”) is seeking to determine the entitlement to confidentiality of *[description of the information that is the subject of the advance or final confidentiality determination]* *[if submitted by the business whose information it is: that you submitted to the EPA]* *[if submitted by an entity other than the business whose information it is: in EPA’s possession.]* *[If information has been claimed as CBI: You have claimed (all or part) of this information as confidential business information (“CBI”).]* *[If no claim has been made: In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that you might be expected to assert a claim that some or all of [if submitted by the business whose information it is: the information you submitted to the EPA] [if submitted by an entity other than the business whose information it is: this information in EPA’s possession] is confidential business information (“CBI”).]*

The purpose of this letter is to notify you that the EPA *[appropriate legal office]* will be making a(n) *[advance or final]* confidentiality determination concerning the information you have claimed as CBI. If you feel that some or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group or class of documents claimed by you to be CBI contains a significant amount of information which our *[appropriate legal office]* determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Any information not specifically identified as subject to a confidentiality claim and substantiated as such in your response to this letter may be disclosed without further notice to you.

For each item or class of information that you continue to claim as CBI, please answer the following questions, giving as much detail as possible. Your comments in response to these questions will be used by the EPA to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.
5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.
9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).
11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

[*For contract-related CBI:* Enclosed is the EPA Class Determination 1-95 entitled, *Confidentiality of Certain Business Information Submitted by Contractors and Prospective Contractors*, which addresses the treatment of different types of information related to contracts. You may consider reviewing Class Determination 1-95 as you develop your response.]

[*If applicable to another EPA class determination:* Enclosed is the EPA Class Determination [class determination number] entitled, [name of the class determination], which addresses the treatment of [description of class determination]. You may consider reviewing Class Determination [#] as you develop your response.]

Please note that *you bear the burden of substantiating your confidentiality and trade secret claim(s)*. Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your comments must be postmarked or hand delivered to this office, or emailed to [email address], by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but the request must be made before the end of the 15-day period. Except in extraordinary circumstances, no extension will be approved. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to itself be confidential, you must mark the response “**CONFIDENTIAL**” or with a similar designation, and must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call me at [telephone number].

Sincerely,

[Signature and Title ; Office Name and Address]

[Enclosure]